

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

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Person to Contact:

Telephone Number:

Refer Reply To:

CC:DOM:P&SI:7 / PLR-114855-99

Date:

December 17, 1999

Legend:

Decedent

A

Trust

Bank 1

Bank 2

State 1

State 2

Court 1

Court 2

Date 1

Date 2

Date 3

Dear

We received your letter dated August 31, 1999, requesting a ruling that the proposed modification of Trust will not cause Trust to be subject to the generation-skipping transfer (GST) tax imposed by §2601 of the Internal Revenue Code. This letter responds to your request.

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Decedent died testate on Date 1. In Article 26 of the Will, Decedent created Trust for the benefit of A. A is entitled to income, in quarterly or more frequent installment, for life and, upon A's death, the remainder of Trust is to be divided into as many equal parts as there are children of A then living and issue of any deceased child of A, one such share or part for each child and one in turn divided into equal parts for the issue collectively of any deceased child. The shares for A's issue who were born, or will have been born, after Decedent's death are to be distributed outright to them, or if not living, to their issue. The shares for A's issue who were living at Decedent's death, are to be held in trust and, after their death, the remainder is to be distributed to their living issue, or if none, to the issue of Decedent in each instance in equal shares, per stirpes and not per capita.

Article 28 of Decedent's will provides that Trust should, at all times, have at least 3 trustees. Currently, one of the trustees is Bank 1 in State 1. On Date 2, Bank 1 in State 1 resigned as a trustee of Trust and Bank 2 in State 2 was appointed, pending court approval. On Date 3, Court 2 in State 2 approved the resignation of Bank 1, the appointment of Bank 2 as successor trustee, and the removal of Trust from State 1 to State 2. However, Court 2's approval is conditioned on the trustees' ability i) to obtain similar approval from Court 1 in State 1 and ii) to obtain a private letter ruling from the Internal Revenue Service confirming that the removal of Trust from State 1 to State 2 will not cause Trust to lose its GST exempt status.

You represented that no additions, actual or constructive, had been made to Trust after September 25, 1985. You also represented that the law of State 1 would continue to govern the administration of Trust and the validity, construction, and interpretation of the trust instrument. In addition, you represented that the only effect of the change in trust situs would be substantial savings in state income tax imposed at the trust level.

You have requested the following ruling: the proposed resignation of Bank 1 as trustee in State 1 followed by the proposed appointment of Bank 2 as trustee in State 2, and the resulting change in situs of Trust from State 1 to State 2, will not affect the current grandfathered or exempt status of Trust, and neither distributions from Trust nor termination of Trust will be subject to the GST tax.

Section 2601 imposes a tax on every generation-skipping transfer.

Section 2611(a) provides that, for purposes of the GST tax, the term "generation-skipping transfer" means (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2612(a) provides that, for purposes of the GST tax, the term "taxable termination" means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless (A) immediately after such

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termination, a non-skip person has an interest in such property or (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

Section 2612(b) provides that, for purposes of the GST tax, the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

Section 2612(c)(1) provides that, for purposes of the GST tax, the term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

Section 2613(a) provides that, for purposes of the GST tax, the term “skip person” means (1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or (2) a trust (A) if all interests in such trust are held by skip persons, or (B) if (i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distribution on termination) be made from such trust to a non-skip person.

Section 2613(b) provides that, for purposes of the GST tax, the term “non-skip person” means any person who is not a skip person.

Section 26.2601-1(b)(1)(i) of the Generation-Skipping Transfer Tax Regulations provides that the generation-skipping transfer tax does not apply to any generation-skipping transfer under a trust (as defined in §2652(b)) that was irrevocable on September 25, 1985. The rule of the preceding sentence does not apply to a pro rata portion of any generation-skipping transfer under an irrevocable trust if additions are made to the trust after September 25, 1985.

Section 26.2601-1(b)(1)(ii)(A) provides that, except as provided in §26.2601-1(b)(1)(ii)(B) or (C), any trust in existence on September 25, 1985, is considered an irrevocable trust.

Any amendment to a trust that is exempt from the generation-skipping transfer tax will cause the trust to lose its exemption if the amendment modifies or otherwise changes the quality, value, or timing of any of the powers, beneficial interests, rights or expectancies of the beneficiaries originally provided under the terms of the trust.

Based on the information submitted and the representations made, we conclude that the proposed changes in trustees for Trust and the change in situs of Trust will not modify or otherwise change the quality, value, or timing of any powers, beneficial interests, rights or expectancies of the beneficiaries originally provided under the terms of Trust, provided that Trust continues to be governed by the laws of State 1. Therefore, the proposed changes will not affect the GST exempt status of Trust, and

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neither distributions from Trust nor termination of Trust will be subject to the GST tax.

This ruling is based on the facts presented and the applicable law in effect on the date of this letter. If there is a change in material fact or law (local or federal) before the transactions considered in this ruling take effect, the ruling will have no force or effect.

Except as specifically ruled herein, we express or imply no opinion concerning the federal tax consequences of this transaction under the cited provisions or any other provisions of the Code.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Christine E. Ellison

Christine E. Ellison
Chief, Branch 7
Office of the Assistant Chief Counsel
(Passthroughs and Special Industries)

Enclosure: Copy for §6110 purposes

CC: